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Litigation Services

Don Ruzicka
February 8, 2018

Norman Brown, et al.
vs.
Anne L. Precythe, et al.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

NORMAN BROWN, et al.,)	
)	Case No. 17-cv-4082
Plaintiffs,)	
)	
vs.)	
)	
ANNE L. PRECYTHE, et al.,)	
)	
Defendants.)	

DEPOSITION OF DON RUZICKA
TAKEN ON BEHALF OF PLAINTIFFS
February 8, 2018

1	I N D E X	
2	EXAMINATIONS	
3	Direct Examination by Mr. Ault	5
4	Cross-Examination by Mr. Spillane	46
5		
6	EXHIBIT INSTRUCTIONS	
7	(Attach original exhibits to original deposition.)	
8		
9	EXHIBITS	MARKED
10	Exhibit 1	Personal Resume Don Ruzicka 9
11	Exhibit 2	Questionnaire 16
12	Exhibit 3	Board Action Sheet 19
13	Exhibit 4	Board Action Sheet 35
14	Exhibit 5	Information for Release Consideration
15		Form 37
16	Exhibit 6	Pre-Hearing Report 38
17		
18	SIGNATURE INSTRUCTIONS	
19	(Signature waived.)	
20		
21		
22		
23		
24		
25		

DEPOSITION OF WITNESS, DON RUZICKA, produced,
sworn, and examined on February 8, 2018, between the
hours of 1:00 p.m. and 2:30 p.m. of that day at the law
offices of Husch Blackwell LLP, 235 East High Street,
Jefferson City, Missouri, before Beverly Jean Bentsch,
CCR No. 640, within the State of Missouri, in a certain
cause now pending in the United States District Court,
Western District of Missouri, Central Division, wherein
Norman Brown, et al. are Plaintiffs and Anne L.
Precythe, et al. are Defendants.

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Beverly Jean Bentsch, CCR No. 640

1 IT IS HEREBY STIPULATED AND AGREED by and
2 between counsel for the Plaintiffs and counsel for the
3 Defendants that this deposition may be taken by Beverly
4 Jean Bentch, a Certified Court Reporter, CCR No. 640,
5 thereafter transcribed into typewriting, with the
6 signature of the witness being expressly waived.

7 DON RUZICKA,
8 of lawful age, having been produced, sworn, and examined
9 on the part of the Plaintiffs, testified as follows:

10 DIRECT EXAMINATION BY MR. AULT:

11 Q. All right, sir. Can you please state and
12 spell your name for the record?

13 A. **Don Ruzicka, R-u-z-i-c-k-a.**

14 Q. All right. And Mr. Ruzicka, you understand
15 you're here for a deposition today?

16 A. **Yes.**

17 Q. Before we begin, I want to make clear I
18 represent the four plaintiffs. I'm co-counsel for four
19 individuals that were sentenced to life without parole
20 for crimes that they allegedly committed as juveniles.
21 Do you understand that?

22 A. **Yes.**

23 Q. Okay. And you understand that you were named
24 as a defendant in the action based on your former role
25 as a member of the Missouri Parole Board, correct?

1 **A. Yes.**

2 Q. Okay. Have you been deposed in the past?

3 **A. No.**

4 Q. Okay. Since this is your first time, I'll run
5 through the ground rules before we begin to make sure
6 everyone is on the same page. Essentially it's similar
7 to an interview. I'll ask questions. Mr. Spillane may
8 have some questions as well. Your job is to answer
9 truthfully to the best of your ability based on your
10 knowledge. We don't want you to guess. It is, as you
11 know, under oath and everything is being taken down by
12 the court reporter seated to your right.

13 So it's important that you answer verbally.
14 The record won't show nods of the head or if you're
15 gesturing or anything like that.

16 **A. Okay.**

17 Q. It's important that we not speak over each
18 other. There will be times where I'll ask a question
19 and you know where I'm going. If you can allow me to
20 finish my question before you answer, it will make
21 things a lot easier. I'll try to extend the same
22 courtesy to you.

23 I will ask some bad questions I'm sure. If I
24 ask a question and you don't understand what I mean, let
25 me know and I'll repeat it or ask the court reporter to

1 read it back. If you answer a question, we'll assume
2 that you understood. Is that fair?

3 **A. Yes.**

4 Q. All right. I don't expect it to be a long
5 deposition, as I said, but we're on your schedule. If
6 you want to take one or more breaks, just let us know.

7 **A. Okay.**

8 Q. Before I move forward, I want to make clear I
9 don't want to know of any discussions that you've had
10 with your attorneys, with the Attorney General's Office
11 or any other attorneys that may be representing you.
12 Other than conversations with your counsel, did you do
13 anything else to prepare for the deposition today?

14 **A. I looked over the complaint and the**
15 **interrogatories.**

16 Q. Okay. Did you speak with -- Other than your
17 counsel, did you speak with anyone to prepare for the
18 deposition?

19 **A. No. I just stopped by to meet Mike today.**

20 Q. Okay. Other than the complaint and discovery
21 interrogatories, things like that, did you review any
22 other documents or transcripts or anything like that?

23 **A. No.**

24 Q. Have you read transcripts of the other
25 depositions that have taken place in this case?

1 **A. No.**

2 Q. Sir, what is your highest level of education?

3 **A. Bachelor's Degree in Wildlife Conservation and**
4 **Management.**

5 Q. Where was that degree from?

6 **A. SMS. Now it's MSU. It's Southwest Missouri**
7 **State or was, with the name change.**

8 Q. Took me a few --

9 **A. Springfield, Missouri.**

10 Q. Took me a few years after moving to Missouri
11 to figure out what the heck happened there.

12 **A. We only have one college in Springfield.**
13 **Well, there's many.**

14 Q. And you received a bachelor's degree; is that
15 correct?

16 **A. Yes.**

17 Q. And what year was that?

18 **A. I believe it was '78. It was '78 or '79.**

19 Q. Okay.

20 **A. 1978 or '79.**

21 Q. Other than your Bachelor's Degree in Wildlife
22 Conservation and Management --

23 **A. Uh-huh.**

24 Q. I believe I said that correctly.

25 **A. Yes.**

1 Q. -- did you go on to receive any higher
2 education, master's degree or anything like that?

3 A. **No.**

4 Q. During your time at Southwest Missouri State,
5 did you take any classes related to the law?

6 A. **No.**

7 Q. Did you take any psychology classes?

8 A. **No.**

9 Q. Did you take any classes that touched on child
10 psychology or adolescent development?

11 A. **I don't believe so.**

12 Q. Okay. I'd like to talk a little bit about
13 your work history. It may be easiest to work through a
14 resume that was provided to us. If I could ask the
15 court reporter to mark this as Ruzicka 1.

16 (RUZICKA DEPOSITION EXHIBIT 1 WAS MARKED FOR
17 IDENTIFICATION.)

18 BY MR. AULT:

19 Q. Sir, this appears to be a Personal Resume that
20 you prepared looks to be dated in December of 2012, so a
21 few years old. Does this look familiar?

22 A. **Yes.**

23 Q. Okay. Is it fair to say that this would be
24 correct as of December of 2012?

25 A. **Yes.**

1 Q. Okay. I just want to touch on a few things.
2 It looks like for about 27 years from 1979 to 2006 you
3 worked as a conservation agent for the Missouri
4 Department of Conservation; is that correct?

5 **A. Yes.**

6 Q. I want to make sure I understand. Tell me a
7 little bit about what you did as a conservation agent.

8 **A. They're the law enforcement body of the**
9 **Missouri State Department of Conservation. So with the**
10 **law enforcement authority which grew through the years**
11 **and evolved and changed, we had full police powers. But**
12 **we weren't only just enforcing the wildlife laws and**
13 **other laws of the state, we also conducted public**
14 **meetings, we did radio shows, went into schools, we**
15 **taught hunter safety. Just a whole variety. We**
16 **investigated pollution investigations and just a variety**
17 **of things.**

18 Q. I appreciate that. That's helpful. You got
19 to what I was inquiring about which was whether --

20 **A. I didn't look -- I'm sorry.**

21 Q. I was curious as to whether there was a law
22 enforcement component to that. It sounds like there
23 was?

24 **A. Yes.**

25 Q. In 2007, you became a state representative for

1 the State of Missouri, correct?

2 **A. Yes.**

3 Q. And it looks like you stopped working for the
4 Missouri Department of Conservation about the time of
5 your election; is that right?

6 **A. Yes.**

7 Q. All right. You served in the State House from
8 2007 to 2012, right?

9 **A. Yes.**

10 Q. Three full terms?

11 **A. I was actually about a week or two shy of --**
12 **since you said three full terms. Really kind of was but**
13 **it wasn't.**

14 Q. I understand. And you -- Am I correct that
15 you left that role to take a position on the Parole
16 Board?

17 **A. Yes.**

18 Q. Okay. During the years between 2007 and 2012,
19 did you serve on any committees that would impact the
20 work of the Parole Board?

21 **A. I was on the law enforcement public safety**
22 **committee for awhile, but I don't -- I can't recall**
23 **anything that related I mean right now offhand to the**
24 **Parole Board.**

25 Q. Do you recall being involved in drafting any

1 legislation that would impact the work of the Parole
2 Board?

3 **A. I don't believe so. Just making sure that I**
4 **did have some law enforcement type legislation, but I**
5 **don't think it would have related to the Parole Board.**
6 **Here again, that's been a few years, some water under**
7 **the bridge.**

8 Q. Sure. I understand that. I understand asking
9 you about specific legislation over a five or six-year
10 legislative career may be kind of difficult but I
11 appreciate that response. A few other things I wanted
12 to touch on. Looks like the third page of your resume
13 there's a number at the bottom right that ends in 108.
14 From 2008 to 2009, there's employment listed for Exit
15 123. Do you see that?

16 **A. Yes.**

17 Q. What is Exit 123?

18 **A. It's real estate related. I just can't recall**
19 **it.**

20 Q. Okay. You were also working as a real estate
21 agent, correct?

22 **A. Yes. While I was a conservation agent, I also**
23 **obtained my real estate license.**

24 Q. Okay. I just wasn't quite sure what that was
25 and wanted to follow up. What I'd like to do is talk a

1 little bit about Senate Bill 590 and some of the other
2 Supreme Court cases and the impact that they have on
3 juvenile life without parole individuals in general,
4 training that you might have had, things like that, and
5 then talk specifically about some of the hearings that
6 you would -- at least one of the hearings that you would
7 have presided over.

8 Are you familiar with the Supreme Court
9 decision in Miller vs. Alabama?

10 **A. No.**

11 Q. Okay. You don't recall reading that case?

12 **A. I don't recall reading that.**

13 Q. Okay. Do you recall reading a case -- or a
14 decision in the case of Montgomery vs. Louisiana?

15 **A. No.**

16 Q. Do you recall any training or discussion with
17 members of the Parole Board involving either of those
18 cases?

19 **A. Unless they came up when we talked about**
20 **Senate Bill 580.**

21 Q. Okay. There's actually -- I think the bill
22 that you're talking about is Senate Bill 590.

23 **A. I said 580.**

24 Q. Close enough.

25 **A. Yeah.**

1 Q. Are you familiar with Senate Bill 590?

2 A. Well, to the best of my knowledge, I dealt
3 with the juvenile hearings that after, the juveniles
4 with life without parole, they could petition to have a
5 parole hearing after 25 years.

6 Q. Uh-huh. Did you ever get a chance to read
7 Senate Bill 590?

8 A. I believe I did.

9 Q. Okay. We don't have to go through all of the
10 language of Senate Bill 590. I will tell you that
11 there's a section that says in a parole review hearing
12 under this section the board shall consider in addition
13 to factors listed in Section 565.033 and then it lists a
14 number of factors to consider in juvenile life without
15 parole cases. Do you recall any training or discussion
16 about additional factors that needed to be considered in
17 the juvenile life without parole hearings?

18 A. There was some discussion. I thought there
19 was some questions that had to be addressed, but usually
20 the analyst is the one that filled the sheet out.

21 Q. Okay. So is it fair to say, and I don't want
22 to put words in your mouth, but what I'm understanding
23 is you understand from Senate Bill 590 that there were
24 some additional questions that needed to be asked of
25 juvenile life parole individuals, correct?

1 **A. Correct.**

2 Q. And that oftentimes it was the analyst that
3 would ask those questions and fill out a sheet related
4 to those factors?

5 **A. I believe so.**

6 Q. Okay. Do you recall any training at board
7 meetings or anything else about those factors in Senate
8 Bill 590?

9 **A. I don't remember any.**

10 Q. Okay. After Senate Bill 590 was passed and
11 enacted, was there a change in how you handled or
12 oversaw hearings for juvenile life without parole
13 individuals? For example, did you ask any different
14 questions during hearings or conduct them in a different
15 manner?

16 **A. I only did the one and I don't recall any.**

17 Q. Okay. Do you recall any training or
18 discussion about how to weigh the factors spelled out in
19 Senate Bill 590 or how those factors should impact your
20 decision?

21 **A. I don't remember.**

22 Q. Typically after a hearing the board would
23 complete what's called a Board Action Sheet, right?

24 **A. Yes.**

25 MR. AULT: I'm going to ask the court reporter

1 to mark this as Ruzicka 2.

2 (RUZICKA DEPOSITION EXHIBIT 2 WAS MARKED FOR
3 IDENTIFICATION.)

4 BY MR. AULT:

5 Q. So this has been marked on the bottom right
6 AGO28. Does this document look familiar to you?

7 **A. Yes. This looks like the sheet that had to be**
8 **filled out with a juvenile hearing.**

9 Q. Okay. And I believe you said that you
10 personally oversaw one juvenile hearing under Senate
11 Bill 590?

12 **A. Yeah. The life without parole. I mean that's**
13 **one because it was brought -- I mean it's brought to my**
14 **attention in this case. I believe that's it.**

15 Q. Okay. In that case -- well, strike that.
16 I'll get to the specific case in a little bit. Is it
17 your understanding, though, that this sheet went into
18 effect after Senate Bill 590 was enacted?

19 **A. Yeah. This sheet went into effect after.**

20 Q. Okay. You mentioned one hearing that you
21 conducted of a juvenile life without parole under Senate
22 Bill 590 and I believe Norman Brown was the name of the
23 offender in that case. Did you change the way that you
24 prepared for that hearing? For example, did you
25 consider any other sources or documents or do anything

1 different than you would in preparing for any other
2 run-of-the-mill hearings?

3 **A. I don't recall any. I was trying to think if,**
4 **it's been so long, if I reviewed the case before we went**
5 **there.**

6 Q. Do you recall voting on juvenile life without
7 parole cases for which the hearings were conducted under
8 Senate Bill 590?

9 **A. Yes. Specifically which ones but I knew I**
10 **had.**

11 Q. Okay. In voting on those cases, did you
12 consider any documents or factors that you wouldn't
13 consider in other cases that weren't being conducted
14 pursuant to Senate Bill 590?

15 **A. Say that again.**

16 Q. Let me try it a different way. So you recall
17 voting in some -- you recall voting related to some
18 individuals that were juvenile life without parole
19 individuals, correct?

20 **A. Yes.**

21 Q. Did you undertake any different strategy
22 before voting in those cases? For example, were there
23 additional things that you considered before voting or
24 additional questions that you asked?

25 **A. No. I mean the report or the file that we**

1 would review had what I considered all the information
2 in it to make my decision. If I had a question of
3 something, I would go speak to the, you know, the board
4 member or analyst that was on the panel.

5 Q. You have the benefit of I think being the last
6 deposition in this case for now. So we've already
7 established a lot of facts about how the votes took
8 place and things like that. So I won't go through all
9 of that with you.

10 I would like to ask do you recall in any
11 juvenile life without parole cases speaking to other
12 board members or analysts that were on the panel before
13 casting your vote?

14 A. I thought there was maybe one or two but here
15 again to be specific, you know, I'm just thinking that I
16 had spoken or asked, you know, a question about the case
17 or what was going on, something like that.

18 Q. Okay. But as you sit here today, you don't
19 recall any specific questions that you would have asked
20 or anything like that?

21 A. No.

22 Q. Okay. There are -- We have Board Action
23 Sheets for three of the named plaintiffs in this case
24 and it looks like you may have voted on them. Let me go
25 ahead and mark one as an exhibit. We may not need to go

1 through all three. So I'll ask the court reporter to
2 mark this as Ruzicka 3.

3 (RUZICKA DEPOSITION EXHIBIT 3 WAS MARKED FOR
4 IDENTIFICATION.)

5 BY MR. AULT:

6 Q. Sir, does this appear to be a Board Action
7 Sheet that the Probation Board would typically use
8 following hearings?

9 A. Yes.

10 Q. Now, if you look, there are about six boxes in
11 the middle of the page that have some initials and I'm
12 looking at the bottom left. There's one that appears to
13 be DWR. Is that you?

14 A. DTR.

15 Q. DTR. My apologies.

16 A. No, that's fine.

17 Q. So fair to say looking at this, this is a
18 Board Action Sheet for [REDACTED]. You would have
19 reviewed the file in this case and issued your ruling or
20 vote here on the Board Action Sheet, correct?

21 A. Yes.

22 Q. That would be your initials there, DTR?

23 A. Yes.

24 Q. Do you recall anything about Mr. [REDACTED]
25 file or anything that you considered in making this

1 decision?

2 **A. You mean now?**

3 Q. As you sit here today.

4 **A. No.**

5 Q. Okay. So fair to say that you clearly know
6 how you voted in this case but you don't have a specific
7 recollection of this file or what you would have
8 considered before making your vote in this file?

9 **A. The information that's in the file that I**
10 **reviewed at the time like the file would be here today I**
11 **would review what's in the file, ask any questions if I**
12 **had of the board member or panel and then make my vote.**

13 Q. Okay. In a case like this, how long would
14 that typically take to review a file? Are we talking a
15 matter of minutes or hours or somewhere in between?

16 **A. You're talking this file or anyone in**
17 **particular? There's such a range.**

18 Q. Well, if you know about this file, that would
19 be helpful.

20 **A. No, I wouldn't, you know, how many files we do**
21 **in a year and how long ago this has been. I'm trying to**
22 **think here to give you an estimate. This is an**
23 **estimate.**

24 Q. Sure.

25 **A. 15 minutes.**

1 Q. Okay. And as we said before, in a case like
2 this you'd review the file that was in front of you. Do
3 you recall anything different, for example, being in the
4 file of a juvenile life without parole case versus other
5 cases or did they look pretty similar?

6 **A. I don't remember.**

7 Q. Okay. There are two other Board Action Sheets
8 for the named plaintiffs in this case, one for [REDACTED]
9 [REDACTED], one for [REDACTED]. I know you voted in
10 both of those cases. Do either of those ring a bell as
11 files that you have any specific recollection of?

12 **A. No.**

13 Q. Okay.

14 **A. There have been files, and I don't know here**
15 **again specific to say if they were juvenile, but there**
16 **would be some on my desk that I would review and I'd**
17 **leave it to the next day and I'd pick up again --**

18 Q. Okay.

19 **A. -- and review it again. They were not easy**
20 **decisions.**

21 Q. Yeah. I understand. I guess what I'd like to
22 know either Mr. [REDACTED] is the Board Action Sheet in
23 front of you, Mr. [REDACTED], Mr. [REDACTED]. As you sit here
24 today, you don't have any specific recollection of what
25 you would have considered in any of those three specific

1 cases?

2 **A. I would have looked at it with the information**
3 **that's provided in the file.**

4 Q. Fair enough. I want to be clear I'm not
5 saying this to be tricky. I know you're handling a
6 tremendous number of these. I'm more just asking in
7 case there was anything that stuck out in your mind as
8 you sit here today that you recall about any of those
9 three files.

10 **A. It's been so long ago I don't recall anything.**

11 Q. That's fair. Prior to a vote on one of these
12 juvenile life without parole cases, was there any kind
13 of a meeting with the board or any other kind of
14 communication about these specific individuals?

15 **A. There was talk just, I don't think these**
16 **specific individuals, but I thought of the juvenile**
17 **parole hearing cases we were going to start having them.**

18 Q. But you don't recall any specific discussions,
19 for example, discussion at a board meeting about
20 individual cases, individual juvenile without parole
21 cases?

22 **A. No, I don't recall any.**

23 Q. Okay. I believe the juvenile life without
24 parole hearing over which you presided was an individual
25 named [REDACTED] who is one of the named plaintiffs in

1 this case. And that hearing took place on [REDACTED]
2 [REDACTED]. Do you recall do you have a
3 recollection of that hearing?

4 **A. A little.**

5 Q. Okay. And you recall being the board member
6 presiding over the hearing, correct?

7 **A. Yes.**

8 Q. Okay. Before that hearing, what steps did you
9 take to prepare?

10 **A. Reviewed the file because as I said earlier I**
11 **thought I reviewed the file at the office, but I know I**
12 **definitely reviewed the file as I always do at the**
13 **facility.**

14 Q. Anything else that you recall other than
15 reviewing the file?

16 **A. No. You mean as far as getting ready to do**
17 **the hearing?**

18 Q. I guess let me be more specific. If this was
19 the first juvenile life without parole hearing that you
20 were conducting pursuant to Senate Bill 590, did you
21 have any conversations with anyone to say hey, for
22 example, this is my first one of these hearings, is
23 there anything that I need to do differently or anything
24 that I should consider leading up to the hearing itself?

25 **A. I think there was some discussion with the**

1 **analyst.**

2 Q. Okay. I won't go through and mark all of
3 these documents unless we need to, but it looks like at
4 that hearing you were present as a board member. There
5 was also a parole analyst and a parole supervisor at
6 South Central Correctional Center. Does that sound
7 right?

8 **A. Yes.**

9 Q. I show that the victim and a support for the
10 victim and the prosecuting attorney were present. Do
11 you recall that?

12 **A. Yes.**

13 Q. The victim service coordinator was present and
14 then also a legal representative for Mr. [REDACTED] by the
15 name of Mae Quinn. Do you recall Ms. Quinn?

16 **A. Yes.**

17 Q. Okay. And I should say that Ms. Quinn was
18 co-counsel on this case until recently. She moved back
19 out to the east coast. Did you have any -- Did you
20 personally have any conversations with Ms. Quinn before
21 or after the hearing?

22 **A. I don't believe so other than since the inmate**
23 **had a delegate would have instructed them or whoever,**
24 **you know, that they're there, you know, as support and**
25 **as we interview that they face us and no one be looking**

1 **back and forth if that's what you say conversation.**

2 **That's just my normal instructional beginning.**

3 Q. Gotcha. That would be an instruction that you
4 give to any delegate that was present; is that fair?

5 A. **Well, those are, yeah, on the victims' cases.**

6 Q. I'm sorry. Go ahead.

7 A. **Those instructions on the victim cases because**
8 **you do have the inmate and then you do have the victim.**

9 Q. I understand. So there are certain
10 instructions that you give when a victim is present that
11 wouldn't be necessary in other cases; is that fair?

12 A. **Yes, because there wouldn't be anyone for them**
13 **to look at or stare over at.**

14 Q. My understanding is during these hearings the
15 offender is permitted a single delegate; is that
16 correct?

17 A. **Yes.**

18 Q. And if that delegate -- strike that. The
19 delegate can be a legal representative, correct?

20 A. **That's correct.**

21 Q. But if the offender brings a legal
22 representative, they're not permitted a second delegate;
23 is that your understanding?

24 A. **Yes, it's just one.**

25 Q. And I will say the audio recording of that

1 hearing was produced in this case. So I've had a chance
2 to review that. I note that you started by giving
3 instructions to the victim and the prosecutor and you
4 mentioned that a delegate would be present and that the
5 delegate was limited to comments of support. Is that
6 similar to instructions you gave in all cases?

7 **A. Yes.**

8 Q. Okay. At that hearing, the hearing lasted I
9 think it was an hour and one minute. It's my
10 understanding that that was probably a lengthier hearing
11 than the average. Is that fair?

12 **A. Average compared to you mean an average**
13 **hearing like a drug or a bad check?**

14 Q. Well, you tell me. Can you give me an average
15 of how long parole hearings typically lasted or did it
16 vary significantly?

17 **A. It varied. I mean probably 15 to 20 minutes**
18 **could be an average up to I think I even had one two**
19 **hours.**

20 Q. So there's a wide variety?

21 **A. Yeah. Each case is different and it depends**
22 **on the number of victims that speak. I mean if they're,**
23 **I forgot the word, approved, you know, if they have**
24 **something to say, we give them time to speak.**

25 Q. Is there any limit put on victims, for

1 example, how long they're able to speak during hearings?

2 **A. A limit? I never heard of one.**

3 Q. Okay. I noted in this case that the victim
4 spoke for over 15 minutes. Is there any limitation on
5 what a victim or a victim's representative is allowed to
6 discuss or bring up during a hearing?

7 **A. What do you mean a victim's representative?**

8 Q. For example, if a victim is deceased and they
9 have a family member come speak, maybe they are
10 considered just a victim, but I guess my question is the
11 same, is there any limitation on issues or topics that
12 they can discuss during the hearing?

13 **A. Well, yeah, we want them to stay focused on,**
14 **you know, the information at hand.**

15 Q. In this hearing, the victim who gave the
16 statement specifically talked about reading Miller vs.
17 Alabama and Montgomery vs. Louisiana. Are there any
18 limits to having victims make legal arguments during
19 their statements?

20 **A. Say that again.**

21 Q. Are there any limitations placed on a victim's
22 ability to advance a legal argument during a hearing?
23 For example, cite to statutes or cite to case law during
24 a hearing?

25 **A. I don't think so. I think it's just left up**

1 **what the board member like I said stays on track.**

2 Q. I note that the victim in this hearing stated
3 that the offender had, to use her terminology, a long
4 adolescent history of crime. Do you ever follow up on
5 statements like that that are made to try to verify the
6 statements?

7 A. **That should be something that's in the report.**

8 Q. Okay. Do you -- You tell me, how much weight
9 do you typically give to victim statements or how do you
10 consider them in making your decision?

11 A. **That's hard to judge.**

12 Q. And I appreciate that. I understand that all
13 of these cases are going to be kind of different. There
14 was a statement made in this case by the victim about
15 the offender's mother and she said that she recalls the
16 mother being contacted by the police, asked to come down
17 to the incarceration facility and she refused at first.
18 I just wonder statements like that, is there ever an
19 attempt to follow up on statements made by an offender
20 or say even a prosecuting attorney that aren't in the
21 record or aren't supported by documents in the record?

22 A. **I've never -- Here again, what they say I look**
23 **at what I have. Here again, I look at what I have in**
24 **the file as far as their history, their background,**
25 **prior arrests.**

1 Q. So if there's any disparity, for example,
2 between what's in the file and what a victim or a
3 prosecuting attorney would say, you would typically base
4 your decision on the documents in front of you and
5 what's in the file; is that fair?

6 **A. Say that again.**

7 Q. If there was a case, for example, where a
8 victim made a statement about the underlying trial or
9 the underlying crime and it conflicts with what's in the
10 file in front of you, would you typically provide more
11 weight and make your decision based on what's in the
12 file?

13 **A. Well, what I have in the file is the official**
14 **police report or record.**

15 Q. Okay. During this hearing at one point the
16 victim stated that the offender's prison record, to use
17 her language, is not unblemished. Do you -- strike
18 that.

19 Are offenders' prison records typically made
20 available to victims prior to a hearing?

21 **A. Are their prison records? I don't think so.**

22 Q. Okay. I was just curious because I reviewed
23 that and I wasn't sure how a victim would know about an
24 offender's prison records. Do you have any sense of how
25 that would occur or do you know how it occurred in this

1 case?

2 **A. No.**

3 Q. Okay. Because my understanding is typically
4 prison records are not made public; is that correct?

5 **A. Yeah.**

6 THE WITNESS: Did I answer that?

7 THE COURT REPORTER: You said yeah.

8 THE WITNESS: I'm sorry. If you want to --

9 BY MR. AULT:

10 Q. Let's try it again. It's my understanding
11 that prison records of offenders are not generally
12 available to the public; is that fair?

13 **A. I believe that's correct.**

14 Q. Fair to say though in this case if a victim
15 made or when the victim made a statement about the
16 offender's prison records, you don't know how she knew
17 about those prison records; is that fair?

18 **A. Well, that's her statement. Here again, I**
19 **have all the information in the file for that hearing**
20 **that's been provided to me. So I know what's in, you**
21 **know, what his history is or what he's done as far as**
22 **violations or conduct.**

23 Q. Okay. And you don't know whether she knew
24 about those violations or conduct or not or if she did
25 know, how she got it or anything related to that?

1 **A. That's her statement.**

2 Q. Okay. The prosecuting attorney spoke after
3 the victim. Is it common for a prosecuting attorney to
4 have the option to speak during a parole hearing?

5 **A. I think the prosecutors and law enforcement**
6 **have the opportunity to speak.**

7 Q. The prosecuting attorney during his statement
8 said that he was providing you with written materials.
9 If a prosecuting attorney or law enforcement showed up
10 at a hearing and provided you with written materials,
11 are those things that you would take and add to the file
12 or what would you do with those?

13 **A. I believe we would, but I'm uncertain if it**
14 **had to go through somebody else or be sent in.**

15 Q. That wouldn't be your job as the board member
16 to do that, correct?

17 **A. I don't remember.**

18 Q. Okay. I reviewed a copy of what the
19 prosecuting attorney provided and I'll note that he
20 attached photographs of the crime scene and diagrams of
21 the crime scene. Is that type of material typically
22 included in a file?

23 **A. Some files it's already in there.**

24 Q. Okay. So it wouldn't be unusual to open a
25 file and see evidence from the underlying crime?

1 **A. Yes.**

2 Q. Okay. I was curious about another thing. In
3 the materials that the prosecuting attorney submitted,
4 there was a list of the offender's conduct violations
5 from when he was incarcerated that include other
6 inmates' names and other inmates' numbers. Do you know
7 whether this information is provided to prosecuting
8 attorneys?

9 **A. No, I have no idea.**

10 Q. Okay. So like I said, I listened to the
11 hearing and I think it's 61 minutes long, just over an
12 hour. By my calculation about 40 minutes of that hour
13 involve discussion of the underlying offense, the
14 underlying crime. And then about 20 minutes is devoted
15 to the offender's statements, discussions about, for
16 example, his behavior while he was incarcerated. I'm
17 curious whether that breakdown is typical that the
18 majority of a hearing focuses on the underlying offense
19 rather than behavior and courses that the offender may
20 have taken. Does that sound pretty common to you?

21 **A. Every case is different.**

22 Q. Okay. In the training that you've received
23 for how to conduct these hearings, is there any kind of
24 suggestion made as to the percent of time that should
25 focus on the underlying crime?

1 **A. Say that again.**

2 Q. For example, is there training saying if you
3 are overseeing one of these hearings you should spend X
4 amount of time discussing the underlying crime or X
5 amount of time discussing their conduct and courses
6 they've taken and a home plan for when they get out? Is
7 there any kind of suggestion about how that breakdown
8 should take place?

9 **A. I don't remember any.**

10 Q. Okay. Do you recall during Mr. [REDACTED]
11 hearing asking any questions about the factors set forth
12 in Senate Bill 590?

13 **A. Here again, yeah, I don't remember.**

14 Q. Toward the end of the hearing there was some
15 discussion about Mr. Brown's minimum eligibility date
16 and whether it had been calculated correctly. Do you
17 remember that issue coming up in this hearing?

18 **A. Vaguely but no details.**

19 Q. Okay. Would it be your job as the board
20 member to calculate that minimum eligibility date or
21 would that have been done by someone else?

22 **A. Someone else.**

23 Q. Okay. So would it be fair to say that you got
24 told you're doing this hearing on this date, here's the
25 file, but you weren't the one that set up the hearing or

1 calculated the minimum eligibility date or anything like
2 that?

3 **A. No, we don't do that.**

4 Q. That would be left to another staff member
5 that's not a board member, fair?

6 **A. Yes.**

7 Q. Okay. During the hearing Ms. Quinn who is
8 Mr. [REDACTED] delegate asked to speak about the minimum
9 eligibility date and you wouldn't permit her. Is there
10 a reason that you didn't allow her to speak on the
11 minimum eligibility?

12 **A. Yeah, because as is stated from the beginning**
13 **to clarify to the delegate that they're there for, you**
14 **know, to lend support as far as like if we want to hear**
15 **home plan or job, what they're going to provide, how**
16 **they can assist him when they're out, that type of**
17 **information.**

18 Q. On the recording after Mr. [REDACTED] left and his
19 delegate left, there was some continued discussion about
20 the minimum eligibility date. Do you recall any
21 discussion about Mr. [REDACTED] case that took place after
22 he left the hearing room? I know that's asking you to
23 go back several months.

24 **A. No. After we complete the hearing, yeah, I**
25 **don't remember.**

1 Q. I'll note that after Mr. [REDACTED] left the
2 hearing the prosecuting attorney remained in the room
3 and he said I don't know if this is appropriate, just
4 based on your question I wanted to hand you this. This
5 is a transcript of a statement. And it appears to me --
6 I'm not sure that he handed you a transcript of a
7 statement from perhaps prior to the original trial. I'm
8 not sure. Do you remember what he handed you?

9 **A. No.**

10 Q. Is it uncommon for a prosecuting attorney to
11 continue to discuss the case after the offender leaves
12 the hearing?

13 **A. We usually don't have many prosecutors. So I**
14 **wouldn't know to say that that's uncommon or not.**

15 MR. AULT: Okay. Probably have another 20 or
16 30 minutes. Should we finish it up or would you like to
17 take a break?

18 MR. SPILLANE: Whatever you want to do, sir.

19 THE WITNESS: Let's keep rolling.

20 MR. AULT: All right. I will ask the court
21 reporter to mark this next exhibit.

22 (RUZICKA DEPOSITION EXHIBIT 4 WAS MARKED FOR
23 IDENTIFICATION.)

24 BY MR. AULT:

25 Q. Now if you take a look at this, the second

1 page appears to be the Board Action Sheet for [REDACTED]

2 [REDACTED]; is that right?

3 **A. Yes.**

4 Q. And it looks like in the box that says
5 decision and remarks initial member, is that your
6 initials there, DTR?

7 **A. Yes.**

8 Q. So the deny and rehear [REDACTED] would have
9 been the decision that you reached after the hearing; is
10 that fair?

11 **A. Yes.**

12 Q. And it looks like all the other individuals
13 that signed agreed deny and rehear [REDACTED], correct?

14 **A. Yes. Say the others voted to or initialed to**
15 **rehear?**

16 Q. Uh-huh.

17 **A. Yes.**

18 Q. The box just above the box that you initialed
19 that says hearing panel comments, did you write that or
20 was that written by someone else?

21 **A. It was written by someone else.**

22 Q. Okay. And if you look at the last page has
23 some information about who else was present. Was that
24 also written by someone else?

25 **A. Yes.**

1 Q. Okay. If you can turn back to the first page.
2 At the bottom it says AG03139. It looks like this was a
3 form similar to what we looked at earlier in the
4 deposition which sets forth the factors under Senate
5 Bill 590; is that correct?

6 **A. Yes.**

7 Q. Do you fill out the information after these
8 five factors or is that someone else's handwriting?

9 **A. That's someone else's handwriting.**

10 Q. Do you know who filled it out?

11 **A. I would believe it's the analyst.**

12 Q. When you initialed this with your
13 recommendation of deny and rehear, was it already filled
14 out?

15 **A. I don't remember.**

16 Q. Okay. Do you recall whether any other members
17 of the board came to you with discussion or questions
18 about how to vote on Mr. [REDACTED] hearing?

19 **A. I don't remember.**

20 MR. AULT: Okay. I'll ask the court reporter
21 to mark this as Ruzicka Exhibit 5.

22 (RUZICKA DEPOSITION EXHIBIT 5 WAS MARKED FOR
23 IDENTIFICATION.)

24 BY MR. AULT:

25 Q. Do you recognize if not this specific document

1 at least this form?

2 **A. Yes.**

3 Q. What is this?

4 **A. Information for Release Consideration.**

5 Q. Okay. It's my understanding that this
6 information is given to the offender following the
7 hearing; is that correct?

8 **A. They get some type of notice.**

9 Q. Okay. As a board member, you're not the one
10 that delivers the notice, correct?

11 **A. No.**

12 Q. Okay. Fair enough. If you look at the
13 bottom, it says the reasons for this action taken are
14 release at this time would depreciate the seriousness of
15 the present offense based on: A) Circumstances
16 surrounding the present offense. What does that mean?

17 **A. It was a serious offense.**

18 Q. Okay. Are there any other -- Is there any
19 other information given to the offender about why the
20 board reached the decision it reached?

21 **A. I don't know.**

22 MR. AULT: Okay. Okay. I'll ask the court
23 reporter to mark this as Ruzicka 6.

24 (RUZICKA DEPOSITION EXHIBIT 6 WAS MARKED FOR
25 IDENTIFICATION.)

1 BY MR. AULT:

2 Q. Do you recognize this form document?

3 A. **Yes, as a Pre-Hearing Report.**

4 Q. Okay. It shows that this Pre-Hearing Report
5 is for Mr. [REDACTED], correct?

6 A. **Yes.**

7 Q. All right. Was it your custom as a member of
8 the board to review the Pre-Hearing report before the
9 hearing took place?

10 A. **Could you repeat that again?**

11 Q. As a member of the board, would you always
12 review the Pre-Hearing Report before conducting a parole
13 hearing?

14 A. **Yes.**

15 Q. Okay. If you look on the third page of the
16 report, the first full paragraph, about right in the
17 middle there's a sentence that begins file material does
18 not contain any information relating to Brown's
19 intellectual capacity or mental and emotional
20 development at the time of the offense. Do you see
21 that?

22 A. **Sorry. Are you on the third page?**

23 Q. Yeah, page 3.

24 A. **Okay. Which paragraph again?**

25 Q. The first full paragraph. The second.

1 **A. The official version?**

2 Q. Yes. So about halfway down do you see there's
3 a sentence that begins file material right in the
4 middle?

5 **A. Yes.**

6 Q. Okay. So I'll read that again. File material
7 does not contain any information relating to Brown's
8 intellectual capacity or mental and emotional
9 development at the time of the offense. Did you ask or
10 do you recall asking during the hearing any questions
11 about Mr. [REDACTED] intellectual or mental capacity at the
12 time that the event took place when he was a juvenile?

13 **A. No. I really wouldn't have any idea.**

14 Q. Okay. I won't mark it as an exhibit. We can
15 if needed, but there was a diagnostic center report in
16 the file that said that Mr. [REDACTED] functional grade
17 level was not tested when he was admitted and an IQ
18 score was not tested when he was admitted. Do you ever
19 consider factors such as a juvenile's mental capacity or
20 IQ or emotional development in making a decision in a
21 parole hearing?

22 **A. Here again, every case is different.**

23 Q. In this case do you recall asking any
24 questions to try to determine Mr. [REDACTED] --

25 **A. I have no idea. This has been so long ago I**

1 **have no idea what I would have asked.**

2 Q. Okay. The last issue I wanted to discuss
3 involved an investigation report that was provided to us
4 by the Attorney General's Office involving a game or
5 contest that allegedly took place during some of your
6 parole hearings. Do you know what I'm talking about?

7 **A. Yes.**

8 Q. The report identifies -- Well, first of all,
9 have you seen, and I'll be done in just a few minutes, I
10 just have a few questions on this. Have you seen the
11 report or read the underlying report?

12 **A. Which report?**

13 Q. An investigation report. It looks like it
14 might have been completed by Amy Roderick?

15 **A. Yes.**

16 Q. Are you familiar with that report?

17 **A. Yes.**

18 Q. Okay. I don't really -- I don't intend to
19 mark it as an exhibit. I just wanted to know whether
20 you were familiar with it. The report identifies I
21 think it's 15 hearings that were reviewed in which
22 certain words were said involving you and an individual
23 named [REDACTED]. Remind me what was [REDACTED]
24 position?

25 **A. Analyst.**

1 Q. Did you ever participate in this game or this
2 contest with any analyst other than Mr. [REDACTED]

3 A. No.

4 Q. Just the two of you?

5 A. **(The witness nodded his head.)**

6 Q. Okay. In the report that was conducted, you
7 said that you incorporated words in song titles to
8 assist with the full body of the complete interview.
9 What did you mean by that?

10 A. **Say that again.**

11 Q. You were asked about incorporating words in
12 song titles and you said that you did so to assist with
13 the full body of the complete interview, and I was
14 curious what you meant by that, if you recall?

15 A. **I don't recall.**

16 Q. Okay. During an interview, I assume it was
17 with Ms. Roderick, you were asked about how you
18 conducted hearings. You said that you follow the
19 hearing form and ask the questions on the form. Is
20 there a hearing form with questions that you typically
21 use during hearings?

22 A. **No. Here again trying to -- Probably what I**
23 **meant is the file maybe instead of, what was the word**
24 **you used, the hearing form. There's no hearing form**
25 **other than the form we go through. To say this would be**

1 the form and we would outline and go through it to ask
2 our questions off of.

3 Q. That's what I wanted to be clear about.
4 There's not a script or a list of questions that you're
5 required to ask in every hearing, is there?

6 A. No.

7 Q. In a follow up letter to Ms. Roderick you
8 state that you review the evidence based tools looking
9 at the guideline and ranges to make your best decision
10 ensuring public safety. Can you tell me what evidence
11 based tools you used?

12 A. Well, that's the -- Here again, that comes out
13 of here information where variation in age and
14 schooling. There's a lot of factors, age and schooling
15 and conduct, criminal history to say that's put in a
16 formula to give us guidelines and ranges.

17 Q. Other individuals that we spoke to talked
18 about a salient factor score.

19 A. Yes.

20 Q. Is that an example of an evidence based tool
21 that you use?

22 A. Here again, I've been gone, retired eight
23 months. Yes, there's a salient factor score. There's a
24 drug score, SACA since you brought that up. S-A-C-A.
25 It's a drug range.

1 Q. After this report was finalized, I believe it
2 was in November of 2016, were there any repercussions or
3 discipline or anything like that?

4 A. No.

5 Q. You remained on the board and continued to
6 conduct hearings, right?

7 A. Yes.

8 Q. Okay.

9 A. Well, you say -- After that, yeah, I went back
10 to hearings. During the investigation I was in the
11 office --

12 Q. Okay.

13 A. -- reviewing those files that are office
14 related.

15 Q. Okay. And then after the investigation you
16 continued going out to the facilities and conducting
17 hearings?

18 A. Yes.

19 Q. Okay. I want to make clear were you involved
20 in any kind of game or contest during Mr. Brown's
21 hearing that you conducted?

22 A. No.

23 Q. Have you ever been involved in a game or
24 contest like that during hearings involving -- strike
25 that. As far as you know, Mr. [REDACTED] hearing was the

1 only Senate Bill 590 hearing that you conducted,
2 correct?

3 **A. I believe that's the only one.**

4 Q. You're not aware of any other Senate Bill 590
5 hearings that you would have conducted in which you were
6 involved in a game or contest of any kind?

7 **A. No.**

8 Q. Your attorneys or the Attorney General's
9 Office provided us with notes from a phone call with a
10 Missouri state senator that raised some issues about
11 your conduct and asked if it had an impact on the
12 hearing involving Mr. [REDACTED]. Were you aware of that
13 phone call?

14 **A. No.**

15 Q. You didn't have any interviews or you didn't
16 talk to anybody about that phone call after it took
17 place?

18 **A. No.**

19 Q. Are you aware of any instances of
20 unprofessional or unethical conduct by board members
21 during hearings?

22 **A. No.**

23 Q. Has anyone from the Department of Corrections
24 or the board ever specifically told you that they
25 disapproved of how you handled any Senate Bill 590

1 hearings which in this case would just be Mr. [REDACTED]
2 hearing?

3 **A. No.**

4 Q. Other than the discussion that we're having in
5 the deposition today, have you had any other discussions
6 other than with your attorney about Mr. [REDACTED] hearing?

7 **A. No.**

8 MR. AULT: Okay. Sir, I believe those are all
9 the questions that I have.

10 MR. SPILLANE: I have maybe two or three
11 questions, take a couple of minutes.

12 CROSS-EXAMINATION BY MR. SPILLANE:

13 Q. When someone is denied based on the
14 circumstances of the offense, does that mean that they
15 will never be paroled?

16 **A. No.**

17 Q. Have you been involved in cases where someone
18 was denied based on the circumstances of their offense
19 and they were later paroled?

20 **A. Denied and later paroled?**

21 Q. Yes.

22 **A. Yes.**

23 Q. Denied based on the circumstances of the
24 offense and then later paroled?

25 **A. Yes.**

1 Q. When you consider either as a member of the
2 majority board or as a panelist sitting on a hearing
3 whether or not to parole an individual, do you consider
4 everything in the Pre-Hearing Report?

5 **A. Yes.**

6 MR. SPILLANE: Those are all the questions I
7 have. Thank you.

8 MR. AULT: I don't have anything further.
9 Mr. Ruzicka, thank you very much for your time.

10 THE WITNESS: You're welcome.

11 MR. SPILLANE: Thank you. We appreciate it.

12 MR. AULT: We can go off the record.

13 THE COURT REPORTER: Do you want to tell him
14 about his signature?

15 MR. SPILLANE: If you want to check it and
16 make sure there are no typographical errors and then
17 sign it, you may, or you may waive signature and trust
18 that the reporter took down everything correctly.
19 Normally everyone has waived. And I assume you're going
20 to do a fine job.

21 THE COURT REPORTER: So do you waive?

22 THE WITNESS: Yes.

23 MR. SPILLANE: Right. That's your decision.

24 THE WITNESS: Yes.

25 (Signature waived.)

1 CERTIFICATE OF REPORTER

2

3 I, Beverly Jean Bentch, CCR No. 640, within the
4 State of Missouri, do hereby certify that the witness
5 whose testimony appears in the foregoing deposition was
6 duly sworn by me; that the testimony of said witness was
7 taken by me to the best of my ability and thereafter
8 reduced to typewriting under my direction; that I am
9 neither counsel for, related to, nor employed by any of
10 the parties to the action in which this deposition was
11 taken, and further, that I am not a relative or employee
12 of any attorney or counsel employed by the parties
13 thereto, nor financially or otherwise interested in the
14 outcome of the action.

15

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Beverly Jean Bentch, CCR No. 640

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